

definition of “occupational therapist” at §484.4 of this chapter.

(7) *Physician*. An individual who meets the qualifications and conditions as defined in section 1861(r) of the Act, and provides the services at §410.20 of this chapter, and has experience providing mental health services to clients.

(8) *Physician assistant*. An individual who meets the qualifications and conditions as defined in section 1861(s)(2)(K)(i) of the Act and provides the services, in accordance with State law, at §410.74 of this chapter.

(9) *Advanced practice nurse*. An individual who meets the following qualifications:

(i) Is a nurse practitioner who meets the qualifications at §410.75 of this chapter; or

(ii) Is a clinical nurse specialist who meets the qualifications at §410.76 of this chapter.

(10) *Psychiatric registered nurse*. A registered nurse, who is a graduate of an approved school of professional nursing, is licensed as a registered nurse by the State in which he or she is practicing, and has at least 1 year of education and/or training in psychiatric nursing.

(11) *Psychiatrist*. An individual who specializes in assessing and treating persons having psychiatric disorders; is board certified, or is eligible to be board certified by the American Board of Psychiatry and Neurology, or has documented equivalent education, training or experience, and is fully licensed to practice medicine in the State in which he or she practices.

**§485.910 Condition of participation: Client rights.**

The client has the right to be informed of his or her rights. The CMHC must protect and promote the exercise of these client rights.

(a) *Standard: Notice of rights and responsibilities*. (1) During the initial evaluation, the CMHC must provide the client, the client's representative (if appropriate) or surrogate with verbal and written notice of the client's rights and responsibilities. The verbal notice must be in a language and manner that the client or client's representative or surrogate understands. Written notice

must be understandable to persons who have limited English proficiency.

(2) During the initial evaluation, the CMHC must inform and distribute written information to the client concerning its policies on filing a grievance.

(3) The CMHC must obtain the client's and/or the client representative's signature confirming that he or she has received a copy of the notice of rights and responsibilities.

(b) *Standard: Exercise of rights and respect for property and person*. (1) The client has the right to—

(i) Exercise his or her rights as a client of the CMHC.

(ii) Have his or her property and person treated with respect.

(iii) Voice grievances and understand the CMHC grievance process; including but not limited to grievances regarding mistreatment and treatment or care that is (or fails to be) furnished.

(iv) Not be subjected to discrimination or reprisal for exercising his or her rights.

(2) If a client has been adjudged incompetent under State law by a court of proper jurisdiction, the rights of the client are exercised by the person appointed in accordance with State law to act on the client's behalf.

(3) If a State court has not adjudged a client incompetent, any legal representative designated by the client in accordance with State law may exercise the client's rights to the extent allowed under State law.

(c) *Standard: Rights of the client*. The client has a right to—

(1) Be involved in developing his or her active treatment plan.

(2) Refuse care or treatment.

(3) Have a confidential clinical record. Access to or release of client information and the clinical record client information is permitted only in accordance with 45 CFR parts 160 and 164.

(4) Be free from mistreatment, neglect, or verbal, mental, sexual, and physical abuse, including injuries of unknown source, and misappropriation of client property.

(5) Receive information about specific limitations on services that he or she will be furnished.

(6) Not be compelled to perform services for the CMHC, and to be compensated by the CMHC for any work performed for the CMHC at prevailing wages and commensurate with the client's abilities.

(d) *Standard: Addressing violations of client rights.* The CMHC must adhere to the following requirements:

(1) Ensure that all alleged violations involving mistreatment, neglect, or verbal, mental, sexual, and physical abuse, including injuries of unknown source, and misappropriation of client property by anyone, including those furnishing services on behalf of the CMHC, are reported immediately to the CMHC's administrator by CMHC employees, volunteers and contracted staff.

(2) Immediately investigate all alleged violations involving anyone furnishing services on behalf of the CMHC and immediately take action to prevent further potential violations while the alleged violation is being verified. Investigations and documentation of all alleged violations must be conducted in accordance with procedures established by the CMHC.

(3) Take appropriate corrective action in accordance with State law if the alleged violation is investigated by the CMHC's administration or verified by an outside entity having jurisdiction, such as the State survey and certification agency or the local law enforcement agency; and

(4) Ensure that, within 5 working days of becoming aware of the violation, all violations are reported to the State survey and certification agency, and verified violations are reported to State and local entities having jurisdiction.

(e) *Standard: Restraint and seclusion.*

(1) All clients have the right to be free from physical or mental abuse, and corporal punishment. All clients have the right to be free from restraint or seclusion, of any form, imposed as a means of coercion, discipline, convenience, or retaliation by staff. Restraint or seclusion, defined in §485.902, may only be imposed to ensure the immediate physical safety of the client, staff, or other individuals.

(2) The use of restraint or seclusion must be in accordance with the written

order of a physician or other licensed independent practitioner who is authorized to order restraint or seclusion in accordance with State law and must not exceed one 1-hour duration per order.

(3) The CMHC must obtain a corresponding order for the client's immediate transfer to a hospital when restraint or seclusion is ordered.

(4) Orders for the use of restraint or seclusion must never be written as a standing order or on an as-needed basis.

(5) When a client becomes an immediate threat to the physical safety of himself or herself, staff or other individuals, the CMHC must adhere to the following requirements:

(i) Restraint or seclusion may only be used when less restrictive interventions have been determined to be ineffective to protect the client or other individuals from harm.

(ii) The type or technique of restraint or seclusion used must be the least restrictive intervention that will be effective to protect the client or other individuals from harm.

(iii) The use of restraint or seclusion must be implemented in accordance with safe and appropriate restraint and seclusion techniques as determined by State law.

(iv) The condition of the client who is restrained or secluded must be continuously monitored by a physician or by trained staff who have completed the training criteria specified in paragraph (f) of this section.

(v) When restraint or seclusion is used, there must be documentation in the client's clinical record of the following:

(A) A description of the client's behavior and the intervention used.

(B) Alternatives or other less restrictive interventions attempted (as applicable).

(C) The client's condition or symptom(s) that warranted the use of the restraint or seclusion.

(D) The client's response to the intervention(s) used, including the rationale for continued use of the intervention.

(E) The name of the hospital to which the client was transferred.

(f) *Standard: Restraint or seclusion: Staff training requirements.* The client

has the right to safe implementation of restraint or seclusion by trained staff. Application of restraint or seclusion in a CMHC must only be imposed when a client becomes an immediate physical threat to himself or herself, staff or other individuals and only in facilities where restraint and seclusion are permitted.

(1) *Training intervals.* In facilities where restraint and seclusion are permitted, all appropriate client care staff working in the CMHC must be trained and able to demonstrate competency in the application of restraints, implementation of seclusion, monitoring, assessment, and providing care for a client in restraint or seclusion and use of alternative methods to restraint and seclusion. In facilities where restraint and seclusion are not permitted, appropriate client care staff working in CMHC must be trained in the use of alternative methods to restraint and seclusion. Training will occur as follows:

(i) Before performing any of the actions specified in this paragraph (f).

(ii) As part of orientation.

(iii) Subsequently on a periodic basis, consistent with the CMHC's policy.

(2) *Training content.* The CMHC must require all appropriate staff caring for clients to have appropriate education, training, and demonstrated knowledge based on the specific needs of the client population in at least the following:

(i) Techniques to identify staff and client behaviors, events, and environmental factors that may trigger circumstances that could require the use of restraint or seclusion.

(ii) The use of nonphysical intervention skills.

(iii) In facilities where restraint and seclusion are permitted, choosing the least restrictive intervention based on an individualized assessment of the client's medical and behavioral status or condition.

(iv) The safe application and use of all types of restraint or seclusion that are permitted in the CMHC, including training in how to recognize and respond to signs of physical and psychological distress.

(v) In facilities where restraint and seclusion are permitted, clinical identification of specific behavioral changes

that indicate that restraint or seclusion is no longer necessary.

(vi) In facilities where restraint and seclusion are permitted, monitoring the physical and psychological well-being of the client who is restrained or secluded, including, but not limited to, respiratory and circulatory status, skin integrity, vital signs, and any special requirements specified by the CMHC's policy.

(3) *Trainer requirements.* Individuals providing staff training must be qualified as evidenced by education, training, and experience in techniques used to address clients' behaviors.

(4) *Training documentation.* The CMHC must document in the staff personnel records that the training and demonstration of competency were successfully completed.

(g) *Standard: Death reporting requirements.* The CMHC must report deaths associated with the use of seclusion or restraint.

(1) The CMHC must report to CMS each death that occurs while a client is in restraint or seclusion awaiting transfer to a hospital.

(2) Each death referenced in paragraph (g)(1) of this section must be reported to the CMS Regional Office by telephone no later than the close of business the next business day following knowledge of the client's death.

(3) Staff must document in the client's clinical record the date and time the death was reported to CMS.

**§485.914 Condition of participation: Admission, initial evaluation, comprehensive assessment, and discharge or transfer of the client.**

The CMHC must ensure that all clients admitted into its program are appropriate for the services the CMHC furnishes in its facility.

(a) *Standard: Admission.* (1) The CMHC must determine that each client is appropriate for the services it provides as specified in §410.2 of this chapter.

(2) For clients assessed and admitted to receive partial hospitalization services, the CMHC must also meet separate requirements as specified in §485.918(f).

(b) *Standard: Initial evaluation.* (1) A licensed mental health professional employed by the CMHC and acting